

UNITED STATES DEPARTMENT OF AGRICULTURE  
AGRICULTURAL MARKETING SERVICE  
BEFORE THE ADMINISTRATOR

In re: )  
United Intertrade, Inc. )  
Houston, Texas ) **Administrator's Decision**  
 ) **APL-058-19**  
 )

This Decision responds to an appeal (APL-058-19) of a Notice of Denial of Certification under the National Organic Program issued to United Intertrade, Inc. (United) of Houston, Texas by the Texas Department of Agriculture (TDA). The operation has been deemed not in compliance with the Organic Foods Production Act of 1990 (Act)<sup>1</sup> and the U.S. Department of Agriculture (USDA) organic regulations.<sup>2</sup>

**BACKGROUND**

The Act authorizes the Secretary to accredit agents to certify crop, livestock, wild crop, and/or handling operations to the USDA organic regulations (7 C.F.R. Part 205). Certifying agents also initiate compliance actions to enforce program requirements, as described in section 205.662, Noncompliance procedure for certified operations. Persons subject to the Act who believe they are adversely affected by a noncompliance decision of a certifying agent may appeal such decision to the USDA Agricultural Marketing Service (AMS) pursuant to § 205.680

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<sup>1</sup> 7 U.S.C. 6501-6522

<sup>2</sup> 7 C.F.R. Part 205

Adverse Action Appeals Process – General, and § 205.681, Appeals of the USDA organic regulations.

### **FINDINGS OF FACT**

1. On January 9, 2018, United applied for organic certification as a handler.
2. On April 18, 2018, TDA conducted an inspection of United's operation.
3. On September 4, 2018, TDA issued a Notice of Noncompliance.
4. On February 25, 2019, TDA issued a Notice of Denial of Certification.
5. On April 15, 2019, TDA rejected United's request for mediation.
6. On May 29, 2019, United filed an Appeal with NOP.

### **DISCUSSION**

The USDA organic regulations at 7 C.F.R. 205.201, Organic production and handling system plan, state that, "(a) The producer or handler of a production or handling operation, except as exempt or excluded under §205.101, intending to sell, label, or represent agricultural products as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))" must develop an organic production or handling system plan that is agreed to by the producer or handler and an accredited certifying agent. An organic system plan must meet the requirements set forth in this section for organic production or handling. An organic production or handling system plan must include: (1) A description of practices and procedures to be performed and maintained, including the frequency with which they will be performed; (2) A list of each substance to be used as a production or handling input, indicating its composition, source, location(s) where it will be used, and documentation of commercial availability, as

applicable; (3) A description of the monitoring practices and procedures to be performed and maintained, including the frequency with which they will be performed, to verify that the plan is effectively implemented; (4) A description of the recordkeeping system implemented to comply with the requirements established in §205.103;(5) A description of the management practices and physical barriers established to prevent commingling of organic and nonorganic products on a split operation and to prevent contact of organic production and handling operations and products with prohibited substances; and (6) Additional information deemed necessary by the certifying agent to evaluate compliance with the regulations.”

The organic regulations at §205.400, General requirements for certification, state that, “A person seeking to receive or maintain organic certification under the regulations in this part must: (a) Comply with the Act and applicable organic production and handling regulations in this part; (b) Establish, implement, and update annually an organic production or handling system plan that is submitted to an accredited certifying agent as provided for in §205.200...”

The organic regulations at §205.401, Application for certification, state that, “A person seeking certification of a production or handling operation under this subpart must submit an application for certification to a certifying agent. The application must include the following information: (a) An organic production or handling system plan, as required in §205.200...”

TDA issued a Notice of Denial of Certification to United due to several unresolved noncompliances, despite prior notifications to United regarding the deficiencies in its application for certification.

United states in its Appeal that it answered all of TDA’s questions and submitted all requested documentation; there were no areas of concern found during the inspection; and it

experienced a 'merry-go-round' of questions from TDA, replying to TDA within 2 weeks, while TDA took 3 to 4 months to respond to their submissions.

United applied for organic certification as a handler on January 9, 2018, after being in the coffee processing and packaging business under the name Mitalena Coffee since 1987 and deciding to enter the organic coffee business. United's subsequently-submitted Processor Organic System Plan (OSP) of March 2, 2018, states its products will be 100% organic Mitalena Coffee and identifies the ingredients as Mitalena Coffee, but notes the label will only state 'organic.' United provided separate answers to the Processor OSP questions on such matters as its internal control procedures, pest contamination and commingling, mislabeling of products, and cleaning and storage processes.

On March 5, 2018, TDA wrote United stating that the application was incomplete and providing a list of deficiencies and documentation needed for the continued processing of United's application, including a complete diagram of United's facility and a flow chart for the operation. TDA stated that United must also submit a detailed "written description of critical control points of potential contamination (with prohibited substances) and commingling of organic product and the control methods used to reduce such risks." TDA also stated that United must submit a detailed written description of the processing activities and handling procedures performed at the operation as well as internal quality control procedures. TDA listed specific items that must be addressed by United for each noncompliance. Lastly, TDA stated United must respond to recordkeeping inquiries in the application and submit a supplier summary sheet.

On March 21, 2018, United submitted a 2018 Handler Certification Year Organic Supplier Summary form identifying the supplier of its organic green coffee beans as [REDACTED] which is certified in the United States by [REDACTED] and [REDACTED], certified

by [REDACTED]. United submitted an organic certificate issued by [REDACTED] but the certified operation is identified as [REDACTED] not [REDACTED]. United didn't provide any explanation for this. United also submitted a certificate for [REDACTED] which was missing its first page. United identified the supplier of its Natural Pecan flavor, Natural Vanilla flavor, and Natural Hazelnut flavor (erroneously misnamed as a duplicate pecan flavor) as [REDACTED], but under the certifier column, United States "FDA." United submitted Organic Compliant Flavor Affidavits from [REDACTED] for the pecan, vanilla and hazelnut flavors, which state that the specified flavor meets the 'natural flavor' definition of the Food and Drug Administration (FDA).

On April 18, 2018, TDA conducted an inspection of United's operation/facility. The Inspection Report does not note any concerns in the various areas. TDA also submitted an Organic Inspection Findings sheet from the inspection which states that all areas are in compliance; the areas are processing categories; products manufactured and ingredients; processing and handling; sanitation' pest management; product labeling; materials used; and recordkeeping.

However, on September 4, 2018, TDA issued a Notice of Noncompliance again stating that United's application was still lacking detailed written explanations of 1) critical control points of potential contamination and commingling of organic product and the control methods used to reduce such risks; 2) processing activities and handling procedures performed at the operation; and 3) internal quality control procedures. The notice reiterated the specific items that must be addressed under each. TDA further stated that United must submit copies of the actual processes and procedures rather than summary statements which United had previously submitted. Additionally, the notice states that United had incurred a \$200.00 'corrective action

fee,' pursuant to TDA's fee schedule. TDA also stated that a review of United's OSP indicates that it is using nonorganic natural flavors as ingredients in its coffee which wasn't disclosed on the listing of ingredients and conflicts with United's identification on its application that its ingredients are 100% organic. TDA provided United options on how to address this discrepancy. The Notice of Noncompliance also noted that United hadn't followed TDA's directions to attach copies of all labels used for certified organic products; a page was still missing from the organic certificate of supplier [REDACTED]; and United hadn't clarified the relationship between [REDACTED] identified as a supplier, and [REDACTED] whose organic certificate was submitted.

On September 24, 2018, United submitted a response to TDA stating that it followed TDA's application instructions step-by-step and made corrections as needed. United then addressed the Notice of Noncompliance point by point, first stating that it relies exclusively on [REDACTED] for its flavorings and [REDACTED] confirmed their flavoring is organic-compliant. United submitted an Order Confirmation from [REDACTED] showing United's order of 8 pounds each of natural vanilla flavor, organic compliant pecan flavor, and organic compliant hazelnut flavor, as well as a Natural Flavor Product Questionnaire – NOP Usage, which [REDACTED] completed for each flavor. United explained it segregated organic production from conventional production and described its practices to prevent contamination and commingling.

United then provided written answers to each of the questions and items listed by TDA for 1) critical control points of potential contamination and commingling of organic product and the control methods used to reduce such risks; 2) processing activities and handling procedures performed at the operation; and 3) internal quality control procedures. However, contrary to TDA's instructions in the September 4, 2018 Notice of Noncompliance, United didn't provide

copies of the actual processes and procedures, i.e. a policy manual or written standards of operation; and instead again only provided what TDA had described as 'summary statements.'

Lastly, United submitted a September 21, 2018 letter from [REDACTED], which states that [REDACTED] buys only organic coffee from certified operations and the coffee supplied to United comes from [REDACTED]. [REDACTED] states that pursuant to a conversation with TDA, they do not need to be organically certified for their trading of the coffee, and only the warehouse where the coffee is stored needs to be certified. United submitted the TDA-issued certificate of [REDACTED] whose certification is for handling services, including warehouse storage. [REDACTED] has been certified since July 18, 2007. United had already submitted the [REDACTED]-issued certificate of [REDACTED]. The complete certificate of [REDACTED] was submitted. However, the requested labels weren't submitted.

On December 13, 2018, TDA emailed United that it received United's response but that it was 'not in the correct format for efficient review.' Subsequently, on February 25, 2019, TDA issued the Notice of Denial of Certification pointing to United's statement in its September 24, 2018 response that it would use organic flavors. However, TDA stated that a review of the purchase order for flavors from [REDACTED] and the Natural Flavor Product Questionnaires for each of the 3 flavors do not substantiate United's claim that organic flavors would be used. TDA also found that United still hadn't attached copies of all labels it planned on using and hadn't provided an overall description of its physical location and facility. TDA again found that United had provided only summary statements in response to TDA's request for copies of United's actual practices and procedures covering 1) critical control points of potential contamination and commingling of organic product and the control methods used to reduce such

risks; 2) processing activities and handling procedures performed at the operation; and 3) internal quality control procedures.

After TDA denied United's request for mediation, United filed an Appeal on May 29, 2019, contending that it answered all of TDA's questions properly, provided all requested documentation, and an inspection found the operation to be in compliance with all regulations and requirements. United also questioned the need to rewrite all previous questions and answers on separate sheets of paper in detail. United further states that it is a small family-owned company with aging personnel; has needed to find new customers after losing 2 major accounts due to drastic changes in the coffee business; and has expended a lot of time, energy, and money to become organically certified.

In conclusion, United has made an effort to comply with the organic regulations and TDA's requests, submitting documentation and responses to TDA's questions on several occasions. TDA has also tried to work with United to bring it into compliance, so as to be granted organic certification. However, TDA instructed United to submit copies of the actual practices and procedures covering critical control points and controls methods to reduce contamination and commingling risks; processing and handling procedures; and internal quality control procedures. While TDA had initially requested merely a written description of these practices and procedures in its March 5, 2018 letter to United, TDA stated in the September 4, 2018 Notice of Noncompliance that United needed to submit copies of the actual practices and procedures rather than summary statements. However, United's September 24, 2018 response to the notice again provided only summary statements addressing the topics and answering TDA's questions. On December 13, 2018, TDA didn't elaborate in its email to United stating that the response wasn't in the 'correct format for efficient review,' however, the records show that



United had still not submitted copies of its actual practices and procedures as cited in the denial of certification. United's Appeal also contained only copies of its previously submitted responses/summary statements regarding the practices and procedures.

The organic regulations at 7 CFR 205.401 state that a person seeking certification of a production or handling operation must submit an application which includes "an organic production or handling system plan, as required in Section 205.200." The regulations at Section 205.201 state that an organic production or handling system plan must include, "(1) A description of practices and procedures to be performed and maintained, including the frequency with which they will be performed...(3) A description of the monitoring practices and procedures to be performed and maintained, including the frequency with which they will be performed, to verify that the plan is effectively implemented;...(5) A description of the management practices and physical barriers established to prevent commingling of organic and nonorganic products on a split operation and to prevent contact of organic production and handling operations and products with prohibited substances; and (6) Additional information deemed necessary by the certifying agent to evaluate compliance with the regulations." To date, United hasn't submitted the actual practices and procedures it plans to implement for its organic coffee production, i.e. a policy manual or written standards of operation, as requested by TDA. Further, United's OSP doesn't contain the required descriptions of the practices and procedures. Additionally, United didn't submit the requested labels for its planned organic products.

## **CONCLUSION**


The USDA organic regulations assure consumers that products with the USDA organic seal meet consistent, uniform standards. Key to these standards is that products with the USDA

organic seal are produced and handled in accordance with the organic regulations. However, United has been unable to comply with the organic regulations at 7 C.F.R. §205.201; 7 C.F.R. §205.400; and 7 C.F.R. §205.401. Therefore, United is ineligible for certification at this time.

### DECISION

The appeal is denied and TDA's Notice of Denial of Certification is upheld. United is denied organic certification at this time. However, pursuant to 7 CFR 205.405(e), United may apply for certification again at any time with any certifying agent. Any application must be accompanied by evidence demonstrating correction of each noncompliance and corrective actions taken to comply with and remain in compliance with the Act and the organic regulations. Additionally, attached to this formal Administrator's Decision denying United's appeal is a Request for Hearing form. United has thirty (30) days to request an administrative hearing before an Administrative Law Judge.

Done at Washington, D.C., on this 27<sup>th</sup>  
day of November, 2019.

  
Bruce Summers  
Administrator  
Agricultural Marketing Service